

***Superseded 5/10/2016***

**77-41-112 Removal from registry -- Requirements -- Procedure.**

- (1) An offender may petition the court where the offender was convicted of the offense requiring registration for an order removing the offender from the Sex Offender and Kidnap Offender Registry if:
  - (a) the offender was convicted of violating:
    - (i) Section 76-5-301, Kidnapping, and the conviction of violating Section 76-5-301 is the only conviction for which the offender is required to register;
    - (ii) Section 76-5-304, Unlawful Detention, and the conviction of violating Section 76-5-304 is the only conviction for which the offender is required to register;
    - (iii) Section 76-5-401, Unlawful sexual activity with a minor and, at the time of the offense, was not more than 10 years older than the victim; or
    - (iv) Section 76-5-401.2, Unlawful sexual conduct with a 16 or 17 year old, and at the time of the offense, was not more than 15 years older than the victim;
  - (b) five years have passed since the completion of the offender's sentence;
  - (c) the offender has successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the conviction;
  - (d)
    - (i) the offender has not been convicted of any other crime, excluding traffic offenses, as evidenced by a certificate of eligibility issued by the bureau;
    - (ii) as used in this Section, "traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;
  - (e) the offender has paid all restitution ordered by the court;
  - (f) the offender has complied with all the registration requirements at all times as required in this chapter, as evidenced by a document obtained by the offender from the Utah Department of Corrections, which confirms compliance; and
  - (g) the office that prosecuted the offender, and the victim, or if the victim is still a minor, the victim's parent, are notified and provided with an opportunity to respond in accordance with Subsection (3)(a).
- (2)
  - (a)
    - (i) An offender seeking removal from the Sex Offender or Kidnap Offender Registry shall apply for a certificate of eligibility from the bureau.
    - (ii) An offender who intentionally or knowingly provides any false or misleading information to the bureau when applying for a certificate of eligibility is guilty of a class B misdemeanor and subject to prosecution under Section 76-8-504.6.
    - (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate of eligibility to anyone providing false information on an application.
  - (b)
    - (i) The bureau shall perform a check of records of governmental agencies, including national criminal databases, to determine whether an offender is eligible to receive a certificate of eligibility under this section.
    - (ii) If the offender meets all of the criteria under Subsections (1)(b) and (d), the bureau shall issue a certificate of eligibility to the offender, which shall be valid for a period of 90 days from the date the certificate is issued.
  - (c)
    - (i) The bureau shall charge application and issuance fees for a certificate of eligibility in accordance with the process in Section 63J-1-504.

- (ii) The application fee shall be paid at the time the offender submits an application for a certificate of eligibility to the bureau.
    - (iii) If the bureau determines that the issuance of a certificate of eligibility is appropriate, the offender will be charged an additional fee for the issuance of a certificate of eligibility.
  - (d) Funds generated under this Subsection (2) shall be deposited in the General Fund as a dedicated credit by the department to cover the costs incurred in determining eligibility.
- (3)
- (a) The offender shall file the petition, original information, and court docket with the court, and deliver a copy of the petition to the office of the prosecutor.
    - (i) Upon receipt of a petition for removal from the Sex Offender and Kidnap Offender Registry, the office of the prosecutor shall provide notice of the petition by first-class mail to the victim at the most recent address of record on file or, if the victim is still a minor, to the parent or guardian of the victim.
    - (ii) The notice shall include a copy of the petition, state that the victim has a right to object to the removal of the offender from the registry, and provide instructions for registering an objection with the court.
  - (b) The office of the prosecutor shall provide the following, if available, to the court within 30 days after receiving the petition:
    - (i) presentencing report;
    - (ii) any evaluation done as part of sentencing; and
    - (iii) any other information the office of the prosecutor feels the court should consider.
  - (c) The victim, or the victim's parent or guardian if the victim is a minor, may respond to the petition by filing a recommendation or objection with the court within 45 days after the mailing of the petition to the victim.
- (4)
- (a) The court shall:
    - (i) review the petition and all documents submitted with the petition; and
    - (ii) hold a hearing if requested by the prosecutor or the victim.
  - (b) The court shall consider whether the offender has paid all restitution ordered by the court or the Board of Pardons.
  - (c) If the court determines that it is not contrary to the interests of the public to do so, it may grant the petition and order removal of the offender from the registry.
  - (d) If the court grants the petition, it shall forward a copy of the order directing removal of the offender from the registry to the department and the office of the prosecutor.
- (5) The office of the prosecutor shall notify the victim of the court's decision in the same manner as notification was provided in Subsection (3)(a).